

From: Bill Durham
To: Microsoft ATR
Date: 1/25/02 6:40pm
Subject: Microsoft Settlement

Honorables,

Under the Tunney Act, I wish to add my voice to those commenting on the proposed Microsoft settlement.

I have perused the Court's findings of fact, and the terms of the proposed settlement. While I do not pretend to be a lawyer, I am a software engineer who has been studying the High Technology industries for well over twenty years. I thus speak as a professional versed in technologic matters.

To put it simply, the court not only has recognized that Microsoft is indeed a monopoly, but they have also found that Microsoft is guilty of actions illegal for such a monopoly -- and I find the notion of allowing the convicted to dictate the very terms of its own punishment to be wholly illogical. In examining the proposed remedy, it not only represents a tiny pittance of punitive damage against such a massive entity, but it actually rewards the defendant by giving it the means to extend that monopoly further into a market where they previously held no such status. How, if such a settlement were to be upheld, could it be considered fair and just if the convicted really profits from the so-called "punishment", while their (innocent) competitors are harmed?

Furthermore, it has come to my attention that at the same time that Microsoft was found guilty of violating Sherman, and while proposed remedies have been whittled down to where they actually benefit the convicted, Microsoft has been continuing to thumb its nose, if you will, in the face of justice -- and that they are indeed carrying out further predatory attacks against their competitors. The chief complaint I have of late, effecting my own business and career, is the acquisition, last year, of key patents from Silicon Graphics Inc. that could threaten the viability of the only real competitor to Microsoft's Direct3D Software API (Application Programming Interface), namely, OpenGL. If this were to go unchallenged, then Microsoft would be allowed to actually gain control of their competition in this area, and have serious repercussions on the entire 3D Computer Graphics industry including 3rd party software vendors and hardware vendors and even the video game console market. This is very serious. Microsoft has already been cited for wantonly using the licensing of its own API's, in many areas of Software Development, not just 3D Graphics, as a means to control developers. And allowing this monopoly to now control the licensing of the _competing_ API's in 3D Computer Graphics means they now control both

sides of that equation -- shattering any hope for true competition. This one example of Microsoft flaunting its might -- even in the face of having been found guilty by the Court -- is an affront to the very ideals of justice, and would put a dire, oppressive strangle-hold on this industry. If Microsoft prevails in their own sentencing, then I fear they will continue to proceed unabated in their anticompetitive actions.

I know that, given the current sour state of the economy, political "realities" have been suggested as an argument -- that in this assumption we must prevent Microsoft's fate from impinging on the economy -- nevertheless, for the good of our progeny and for the Rule of Law to be sustained, something extremely serious needs to be done to drive home to the convicted party that their actions are to no longer be tolerated in a free and open market. It may still be too much to hope that a serious break-up would be upheld, since -- as presumed by many -- that such a remedy might actually contribute to the weakening of the economy -- but then if that were true, then the very fact that the welfare of just one such corporation could have such an impact on the whole economy means that the situation with that obvious monopoly should be rectified to reduce its impact, not increase it (as Microsoft's own suggested remedy would cause to occur). If any one company is considered so vital to the whole economy, then, logically, measures must be taken such that we do not have "all our eggs in that one basket."

Please, we beg you, give this considerably more thought.

--Bill Durham,
Independent software engineer